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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/773,695	02/05/2004	David Dunlap	C004 100104	7783

32662 7590 09/24/2007  
FELIX L. FISCHER, ATTORNEY AT LAW  
1607 MISSION DRIVE  
SUITE 204  
SOLVANG, CA 93463

EXAMINER

MUSSELMAN, TIMOTHY A

ART UNIT	PAPER NUMBER
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3714

MAIL DATE	DELIVERY MODE
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09/24/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/773,695

Applicant(s)

DUNLAP ET AL.

Examiner

Timothy Musselman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 24 January 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6, 15, 17, 18, 23-29, 37 and 39-43 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 15, 17, 18, 23-29, 37 and 39-43 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Status of Claims***

In response to the amendment filed 1/24/2007, claims 1-6, 15, 17-18, 23-29, and 37 are pending in this application. Claims 7-14, 16, 19-22, 30-36, and 38 have been cancelled.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of the relevant portion of 35 U.S.C. 103 that forms the basis for the rejections made in this section of the office action;

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.

**Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pella et al. (US 6,234,802) in view of Shpiro (US 2002/0150869).**

**Regarding claim 1, 15, 17-18, 24, 37, and 39-41,** Pella discloses a computer system and methods comprising the display of a simulated environment in which a user interactively navigates and interacts with virtual characters and objects based on position in the virtual environment. See col. 1: 46-65. Pella further discloses means for prompting a statement from a character and accepting user input through a microphone. See col. 1: 58-66. Pella further discloses wherein the user input is compared to a set of anticipated responses, and a skill level of the learner is determined. See col. 10: 57-60, col. 10: 29-39, and col. 8: 57-63. Pella further discloses selecting and playing audio of the character's response based on the user's input and skill level. See col. 9: 12-16 and col. 10: 40 – col. 11: 16. Pella fails to teach of

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applicant's limitations wherein the same dialog interaction takes place through textual menu selections (i.e. the character's spoken text is displayed, anticipated responses are displayed, and an anticipated response is selected). However, Shpiro discloses this feature as well. See paragraphs 45 and 47. It would have been obvious to one of ordinary skill in the art at the time of the invention to include the skill dependant sequencing and text interface features of Shpiro in the system of Pella, in order to provide written as well as spoken language practice.

**Regarding claims 2-5 and 25-28**, Pella discloses wherein providing text or audio output descriptive of selected virtual objects is old and well known in the art. See col. 1: 30-40. The inclusion of such a feature into the system of Pella would have been obvious to one of ordinary skill in the art at the time of the invention because it would have merely been a combination of elements already known in the art, and it would not have produced any unexpected results.

**Regarding claims 6 and 29**, the limitations of claims 2 and 25 are met as described above, including object selection, but there is no teaching wherein the system output based on the object selection comprises prompting the user to input into a text box the name of the selected object, and a skill level being determined therefrom. However, examiner takes OFFICIAL NOTICE that such entry of vocabulary items is old and well known in the art, and that such a combination with the system of Pella would have been obvious to one of ordinary skill in the art at the time of the invention because it would merely represent a combination of language instruction techniques already old and well known in the art.

**Regarding claims 23 and 42-43**, Pella further discloses wherein the response time of the user is measured. See col. 10: 40-60. Pella further discloses rating the response based on the nearest matches to anticipated responses and determining a skill level score therefrom that measures vocabulary knowledge. See col. 10: 40- col. 11: 15. Note that the response time is figured into the calculation because the response time effects whether answers are correct or incorrect.

### ***Response to Arguments***

Applicant's arguments dated 1/24/2007 have been fully considered. Applicant argues that Pella teaches away from the pronunciation of selected objects. Examiner is not persuaded. The previous examiners citation of col. 1: 35-40 demonstrates that this type of interaction is old and well known in the art. The teaching away of this less preferred method (according to Pella) does not mitigate the fact that it has been disclosed as old and well known in the art. Further arguments are moot in view of the new grounds of rejection. However, since the current examiner has interpreted the Pella reference as containing elements that the original examiner did not, this action is made NON\_FINAL.

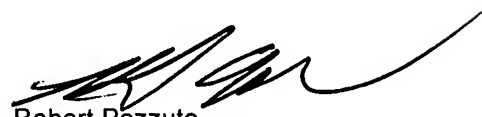
### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy Musselman whose telephone number is (571)272-1814. The examiner can normally be reached on Mon-Thu 6:00AM - 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pezzuto can be reached on (571)272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Robert Pezzuto  
Supervisory Primary Examiner  
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